COUNCIL OF EUROPE CONSEIL DE L'EUROPE

.
Strasbourg, 12 March 2003
DH-PR(2003)004

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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COMMITTEE OF EXPERTS FOR THE IMPROVEMENT OF PROCEDURES FOR THE PROTECTION OF HUMAN RIGHTS (DH-PR)

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REPORT

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53rd meeting, 5-7 March 2003

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Introduction

1. The Committee of Experts for the Improvement of Procedures for the Protection of Human Rights (DH-PR) held its 53rd meeting at Strasbourg, on 5-7 March 2003. The meeting was chaired by Mr Linos-Alexander SICILIANOS (Greece). The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.

2. During the meeting, the DH-PR, in particular:

(i) examined the consolidated draft elements prepared by the Reflection Group (CDDH-GDR(2003)014) and made a number of comments and drafting suggestions to be discussed during the Joint meeting between the CDDH-GDR and representatives of the DH-PR on 17-20 March 2003 (Appendix IV);

(ii) undertook a first examination of the elements which could be reflected in a recommendation on the European Convention of Human Rights in professional training and university education (Appendix V);

(iii) held the election of its Vice-Chair ;

(iv) adopted the present report as a whole.

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Item 1: Opening of the meeting and adoption of the agenda

3. The Chair stressed that the main purpose of the meeting was the examination of document CDDH-GDR(2003)014 *"Consolidated draft elements for sections A, B and C"* prepared by the Reflection Group. The DH-PR was called to give its opinion on the whole text with a view to making progress in the preparation of the set of concrete and coherent proposals that the CDDH is to submit to the Committee of Ministers by 17 April 2003 concerning the strengthening of the system for the protection of human rights established under the ECHR.

4. He recalled that another opportunity for the DH-PR members to come back to such proposals before the extraordinary meeting of the CDDH (1-4 April 2003) would be at the Joint meeting between the CDDH-GDR and a number of representatives of the DH-PR (17-20 March 2003; the list of such representatives appears in Appendix III).

Item 2: Strengthening of the System for the Protection of Human Rights established under the ECHR – Contribution to the drawing up of the final report of the CDDH

A – Preventing violations at national level and improving domestic remedies
B – Optimising the effectiveness of the filtering and subsequent processing of applications
C - Improving and accelerating execution of judgments of the Court

5. The Secretary of the CDDH-GDR recalled the background and rationale of document CDDH-GDR(2003)014, which should be considered, at this stage, as a picture of the state of thinking as of 25 February 2003, the detailed drafting of which had yet to be agreed upon. The aim is that of preparing two documents: a very concise one, presenting a set of concrete

and coherent proposals accompanied by clear and user friendly explanations of the rationale behind them, and a longer, more technical one.

6. The DH-PR undertook detailed consideration of the proposals and of their rationale, in particular the issue of a possible Statute for the Court (issue discussed in plenary and subsequently in an open-ended group).

7. The suggestions for amendment and the relevant explanations appear in Appendix IV.

Item 3: The ECHR in professional training and university education

8. In the light, in particular, of elements put forward by the Secretariat and by the NGO AIRE Centre, the DH-PR undertook a first examination in view of the preparation of a recommendation on the European Convention on Human Rights in professional training and university education. Appendix V contains the elements retained for further consideration at the next meeting.

Item 4: Election of the Vice-Chair

9. According to the relevant provisions of article 17 of appendix 2 to Resolution (76) 3 on Committee structures, terms of reference and working methods, Mr. Jiri MALENOVSKI (Czech Republic) was elected as Vice-Chair of the DH-PR for one year, starting on 1st January 2003. This term of office may be renewed once.

Item 5 : Date of the next meeting

10. The 54th meeting of the DH-PR will be held on 10-12 September 2003.

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Appendix I

LIST OF PARTICIPANTS / LISTE DE PARTICIPANTS

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EUROPEAN COORDINATING GROUP FOR NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS/
GROUPE DE COORDINATION EUROPEENNE DES INSTITUTIONS NATIONALES POUR LA PROMOTION ET LA PROTECTION DES DROITS DE L'HOMME
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M. Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division/Chef de la Division de la coopération intergouvernementale en matière de droits de l'homme

Mr Jeroen SCHOKKENBROEK, Head of the Human Rights Law and Policy Development Division/Chef de la Division du développement du droit et de la politique des droits de l'homme

Mme Gioia SCAPPUCCI, Administrator/Administratrice, Human Rights Intergovernmental Cooperation Division/Division de la coopération intergouvernementale en matière de droits de l'homme

M Mikaël POUTIERS, Administrator/Administrateur, Human Rights Intergovernmental Cooperation Division/Division de la coopération intergouvernementale en matière de droits de l'homme

Mme Michèle COGNARD, Assistant/Assistante

* * *

Interpreters/Interprètes
Mme Martine CARALY
Mr Philippe QUAINE
Mme Josette YOESLE-BLANC

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Appendix II

AGENDA

Item 1: Opening of the meeting and adoption of the agenda

Working documents

- Draft agenda — DH-PR(2003)OJ001rev
- Report of the 61st meeting of the CDDH-BU (30-31 January 2003) — CDDH-BU(2003)001, §§ 15-18 and 24-25
- Report of the 54th meeting of CDDH (1-4 October 2002) — CDDH(2002)016 (extracts)
- Report of the 52nd meeting of DH-PR (11-13 September 2002) — DH-PR(2002)011
- Report of the 1st meeting of GT-DH-PR (13-14 June 2002) — GT-DH-PR(2002)004

Item 2: Strengthening of the System for the Protection of Human Rights established under the ECHR – Contribution to the drawing up of the final report of the CDDH

A – Preventing violations at national level and improving domestic remedies

Working documents

- Report of the 7th and 8th meetings of the CDDH-GDR (5-7 and 19-21 February 2003) — CDDH-GDR(2003)012, item 4
- Consolidated Draft Elements for Sections A, B and C — CDDH-GDR(2003)014, pp. 2-4
- Secretariat Memorandum on Implementation of the ECHR: Effective remedies at national level — DH-PR(2002)001rev
- Secretariat Memorandum on Systematic screening of the compatibility of draft legislation, as well as of administrative practice, with the standards fixed by the ECHR — DH-PR(2003)001rev
  (Note that this document is a revised version of DH-PR(2003)001 which includes clarifications received by Switzerland and Ireland)

B – Optimising the effectiveness of the filtering and subsequent processing of applications

Working documents

- Report of the 7th and 8th meetings of the CDDH-GDR (5-7 and 19-21 February 2003) — CDDH-GDR(2003)012, item 4
- Consolidated Draft Elements for Sections A, B and C — CDDH-GDR(2003)014, pp. 5-11

C – Improving and accelerating execution of judgments of the Court

Working documents

- Report of the 7th and 8th meetings of the CDDH-GDR (5-7 and 19-21 February 2003)	CDDH-GDR(2003)012, item 4
- Consolidated Draft Elements for Sections A, B and C	CDDH-GDR(2003)014, pp. 12-18

Item 3: The European Convention on Human Rights in professional training and university education

Working document

- Elements in view of the preparation of a recommendation on the ECHR in professional training and university education.	DH-PR(2003)MISC

Item 4: Election of the Vice Chair

Item 5 : Date of the next meeting

For information:
On 18 December (822nd meeting) the Deputies adopted Resolution Res(2002)58 and Recommendation Rec(2002)13 on the publication and dissemination in the member states of the case-law of the European Court of Human Rights as well as Resolution Res(2002)59 concerning the practice in respect of friendly settlements. Document DH-PR(2003)003 contains the three texts as adopted by the Committee of Ministers as well as their Explanatory Memoranda.

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Appendix III

LIST OF MEMBERS OF DH-PR PARTICIPATING IN THE JOINT MEETING WITH THE CDDH-GDR ON 17-20 MARCH 2003

1.	Austria:	Mrs Brigitte OHMS
2.	Belgium:	Mrs Isabelle NIEDLISPACHER
3.	Bulgaria:	Mr Andrey TEHOV
4.	Croatia:	Ms Lidija LUKINA-KARAJKOVIC
5.	Czech Republic:	Mr Jiri MALENOVSKY
6.	Denmark:	Ms Anne FODE
7.	Georgia:	Mr Konstantin KORKELIA
8.	Germany:	Mme Ines KAUFMANN-BÜHLER
9.	Ireland:	Ms Denise McQUADE
10.	Russian Federation:	Mr Maxime TRAVNIKOV
11.	Turkey:	Ms Sirin PALA
12.	United Kingdom:	Mr Christopher WHOMERSLEY

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Appendix IV

COMMENTS AND DRAFTING SUGGESTIONS[1]
to document CDDH-GDR(2003)014
made by DH-PR at its 53rd meeting (5-7 March 2003)

A. PREVENTING VIOLATIONS AT NATIONAL LEVEL AND IMPROVING DOMESTIC REMEDIES

Proposal A.1.: The Committee of Ministers should adopt a recommendation to the member States on improving domestic remedies, which should include the following elements. Examples of good practice should be appended.

Elements:

a. **In order to give full effect to Article 13 of the Convention,** member States should take practical measures in order to ascertain, on a regular basis and in the light of the Court's case-law, that remedies exist, and that these are effective in all cases where there is an arguable complaint that the Convention may have been violated.
In order to help those States who wish to have assistance from the Council of Europe to implement this recommendation, teams of national experts, assisted by experts from the Council of Europe could be created to carry out surveys into the remedies available in their national systems.

b. Once a judgment pointing to a structural problem has been delivered, and where numerous applications raising the same problem are pending or likely to be brought before the Court, the respondent State should ~~review the available remedies which would allow these (potential) applicants to bring their cases before a national authority, and consider giving them access to a remedy, where necessary and where possible with retroactive effect.~~ **ensure that applicants, actual or potential, have a remedy that will enable them to bring their case before a national authority. In this context the defending State might consider the institution of a new remedy. When possible and desirable, such remedies could have retroactive effect.** The Governments should rapidly inform the Court of the existence of such remedies.

Argument:

Element a.:

In accordance with the subsidiarity principle that underlies the entire supervisory machinery established under the Convention*, it is up to each member State to ensure that the* ***latter*** *~~Convention~~ is correctly implemented and, consequently, to ensure that effective domestic remedies exist and are available to any person alleging that there has been violation of the Convention (Articles*

[1] **This Appendix reproduces document CDDH-GDR(2003)014, adding by means of strike-throughs or bold characters and a different font, the proposals for amendment and the comments made by the DH-PR in view of the joint meeting of 17-20 March 2003.**

1 and 13 of the Convention). The case-law of the Court illustrates that this protection on the national level is sometimes imperfect, which can generate a high number of cases being brought before the Court. The existence of really effective remedies should in the long run lead to a reduction in the workload of the Court, both quantitatively, since more individuals can obtain redress before a national authority and qualitatively, since a case which has been well examined by a national authority is subsequently much easier for the Court to deal with.

An examination of the current national situation, carried out in the light of the Court's case-law, would be useful and necessary so that States can correct any shortcomings observed more easily. It is recommended that this analysis be carried out by national experts with good knowledge of the national system, in conjunction with experts from the Council of Europe with a good knowledge of the Court's case-law. In States where they exist, National Human Rights institutions can also play a useful role. The Committee of Ministers should examine the question of financial resources necessary to allow the Council of Europe to respond to any request for assistance for conducting such surveys.

Element b.:

*This proposal aims to reduce the significant workload which "repetitive cases" represent for the Court (**at present** approximately 65% of judgments fall into this category). The introduction of such remedies would enable the European Court of Human Rights to return applications to the applicants in repetitive cases following a "pilot" judgment, in order that they seek redress through the new remedy. Should an applicant nonetheless persist, the Court could declare the application inadmissible on the grounds that the new domestic remedy had not been exhausted.*

Whilst damages are not the only type of reparation possible or necessary, they are the most practical and effective remedy and can profitably be used in addition to other measures.

The appendix to this recommendation should contain examples of good practice allowing for fulfilment of the obligation to have effective remedies.

This appendix could also give suggestions as to what type of repetitive cases could be covered by a domestic remedy as outlined in element b.

The wording of element b recognises that it is not in every case where a structural problem is revealed by a Court judgment that it will be necessary or appropriate to create new measures, or that they be made retroactive.

Subject to the suggested drafting revisions above, the DH-PR agrees with proposal A.1.

Proposal A. 2.: The Committee of Ministers should adopt a ~~short~~ recommendation to member States ~~on~~ aimed at ensuring the systematic screening against the ECHR of ~~draft~~ legislation, draft legislation and administrative practice. The recommendation ~~which~~ should include the following elements. Examples of good practice should be appended.[2]

[2] The CDDH-GDR decided to revert to this proposal at the joint meeting with DH-PR experts.

Elements:

a. In order to ensure that draft laws are compatible with the Convention, the member States should review the effectiveness of existing procedures and where necessary institute or improve such procedures.

b. ~~As the Convention is a living instrument,~~ **Considering in particular the evolution of the case-law of the Court,** States should also ensure that there are adequate systems for verifying the ~~(continued)~~ compatibility **with the ECHR** of existing legislation and administrative practice, **notably** as expressed in regulations, orders and circulars.

Argument:
This recommendation would be concise and phrased in general terms. **Its** ~~*The*~~ *implementation* ~~*of this recommendation*~~ *would make an important contribution to the prevention of human rights violations and help contain the flow of cases coming to Strasbourg.*

Among the examples of good practice that could be mentioned in the compendium of good practice appended to the recommendation, it would be useful to draw attention, inter alia, to the role that could be played, in States where they exist, by national institutions for the promotion and protection of human rights and by similar bodies, including ombudsmen, in this field.

Subject to the suggested drafting revisions above, the DH-PR agrees with proposal A.2.

Proposal A. 3.: The Committee of Ministers should adopt a recommendation to the member States to encourage them to take adequate measures to increase information, awareness-raising, ~~training and~~ education and training in the field of human rights.

Elements:

(a) To ensure that the Convention is fully respected at national level, member States should take all necessary steps (information, awareness raising, education and training) to provide the various sectors of society sufficient knowledge of the Convention's requirements.

(b) In particular, to prevent Convention violations, they should ensure that by means of appropriate (university and professional, initial and in-service) training, judges, prosecutors and lawyers and other key sectors involved in law enforcement, such as the security forces (police and gendarmerie), prison personnel and other personnel dealing with persons deprived of their liberty, e.g. in hospitals, the immigration services, local

authorities and the social services have an appropriate knowledge of the Convention system, and in particular of the relevant case-law of the Court.

Argument:
It is acknowledged that information, awareness-raising, ~~training and~~ human rights education **and training** *are* **essential** *elements ~~that help to reduce~~* **in order to reduce** *the number of violations of the European Convention on Human Rights and in the long run, to reduce the number of cases brought before the Court. Besides other national bodies active in this field, national institutions for the promotion and protection of human rights (in States where they exist) and similar bodies, including ombudsmen, could play an important role in this regard. This role would be in addition to the other roles that these bodies might already fulfil. This recommendation[3] could be accompanied by a* **compendium of good practices** **as well as** *a Declaration setting up a European programme for training in Convention standards for the legal professions.*

Subject to the suggested drafting revisions above, including elements (a) and (b), the DH-PR agrees with proposal A.3.

Proposal A. 4.: The Committee of Ministers should adopt a ~~political~~ Declaration ~~referring to~~ that would be followed by a compendium of the various recommendations and resolutions concerning the prevention of violations at national level and the improvement of domestic remedies, ~~drawing attention to the importance of the recommended measures and expressing a strong political commitment by member States to implement these recommendations. The Committee of Ministers~~ and should also organise an effective monitoring of how these ~~recommendations~~ instruments are implemented. ~~culminating in a report to be presented at an appropriate political level~~

Argument:
The importance and interdependence of the measures set out in the recommendations ***and resolutions*** *~~that the Committee of Ministers has already~~ adopted* ***or envisaged*** *~~(especially~~ since the Rome Ministerial Conference of November 2000~~)~~ in the area of preventing violations at national level and improving domestic remedies~~, and those that, in the CDDH-GDR's view, should be drawn up,~~ should be highlighted in a single ~~political~~ text* ***which would express the member States' strong commitment to their implementation. It would be accompanied by ~~one volume bringing~~ a compendium containing all these ~~instruments together~~ texts.***

Effective monitoring of the progress made in implementing **them** *~~these recommendations~~ should also be ~~organised, in order~~* ***ensured by the Committee of Ministers by whatever means it considered appropriate (including, if need be, a report to be submitted at a politically appropriate level)*** *to ensure that* ***the recommended measures*** *~~they will be capable of having~~* **have** *a real impact on the number of applications introduced before the Court.*

[3] **A draft text of such a recommendation appears in Appendix V.**

Subject to the suggested drafting revisions above, the DH-PR agrees with proposal A.4.

B. OPTIMISING THE EFFECTIVENESS OF THE FILTERING AND SUBSEQUENT PROCESSING OF APPLICATIONS

Proposal B. 1.: Amend the ECHR in order to empower committees of three judges to rule, in a summary procedure, jointly on admissibility and merits of an application if the underlying question in the case, concerning the interpretation or application of the Convention or the Protocols thereto, has already been the subject of well-established case-law of the Court[4]

New wording of Article 28:

"Article 28
Decisions and judgments by committees[5]

1. A committee may, by a unanimous vote, declare an individual application submitted under Article 34

a. inadmissible or strike it out of its list of cases, where such a decision can be taken without further examination; or

b. admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the protocols thereto, has already been the subject of well-established case-law of the Court.

2. The decisions and judgments under paragraph 1 shall be final.

3. If the judge elected in respect of the State Party concerned is not a member of the committee, the committee may at any time during the proceedings invite that judge to take the seat of one of the members of the committee, particularly in cases where the Respondent State has contested the application of the procedure under paragraph 1 (b)."

***Argument**:*
The proposal is to supplement existing procedures for manifestly ill-founded applications, with a simplified procedure for manifestly well-founded applications. This procedure would mainly apply to "repetitive cases", which represent, accordidng to recent information submitted by the Court, some 65% of all judgments. *The implementation of this proposal would* ***thus*** *bring important advantages in terms of effectiveness, whilst maintaining the principles of judicial and collegiate decision-making:*

[4] Some experts considered that this proposal could be combined with another idea, namely to create a competence for a single judge to declare certain cases inadmissible (current Committee cases or cases clearly inadmissible on procedural grounds).

[5] ~~This new title of Article 28 might warrant a review of the titles of some other provisions, e.g., Article 29.~~

a. instead of seven judges (the current Chamber procedure) only three judges would be involved in such judgments;

b. as well as the current 4 Chambers of the Court, some 12-15 Committees would also become competent to rule on the merits of many applications, which represents a significant increase in the decision-making potential of the Court. As such, this proposal does not require reinforcement of the Registry. However, reinforcement of the Registry and of the Department responsible for the supervision of execution of judgments will undoubtedly be necessary as a result of the likely increase in the number of applications and judgments.

c. the procedure would be much simpler than the ordinary contentious Chamber procedure in that the Committee would bring the case (possibly a group of similar cases) to the attention of the Respondent State and the applicant with an indication that the case concerns a question that has already been decided by the Court. The Committee would rule on all aspects of the case (admissibility, merits, just satisfaction) in a single judgment. This system would require unanimity in the Committee on all aspects. The Respondent State would have the possibility to contest the application of Article 28, para. 1 (b), but no right of veto to this manner of processing the application. In the event there was no unanimity in the Committee, it would be considered that no decision is taken and the Chamber procedure would apply (Article 29). ~~Even where the Committee had initially envisaged to adopt a judgment under Article 28, para. 1 (b), it would nonetheless be open to it to declare the application inadmissible in accordance with Article 28, para. 1 (a);~~

~~d. this new procedure would primarily apply to "repetitive cases" which, according to information provided by the Court, account for some 65% of the judgments rendered by the Court;~~

*~~d.~~ **d.** this new procedure would not change the legal aid system as it exists today. If necessary, practical solutions should be found for making this legal aid effectively accessible in cases where there is a dispute as to the law or facts;*

*~~e.~~ **e**. it would do away with the mandatory participation of the "national judge" in cases that can be dealt with on the basis of Article 28, § 1 (b), given that such participation is often unnecessary since no new questions concerning the interpretation or application of the Convention will be dealt with by the Committee; this would give added flexibility to the Court. A procedure would have to be provided for so as to allow the national judge to sit on the Committee of three judges**.** It is proposed to leave this for the Court to regulate, whilst including a strong indication in the proposed Article 28 § 3 to the effect that participation of the national judge may be particularly useful if the Respondent State has contested the applicability of Article 28, § 1 (b);*

*~~f.~~ **f.** there would be no possibility to request, after a Committee judgment, a referral to the Grand Chamber. Such referral would not be necessary in such cases.*

Consequential changes:

- See proposal ~~B.2~~ **B.3** hereafter;
- The proposal would probably require that the role of judge-rapporteur be preserved (matter to be regulated in a Statute/Rules of Court).

Impact assessment: [to be completed in the light of information to be provided by the Registry]

A key issue concerns the interpretation to be given to the wording "well-established case-law", since this is the *sine qua non* for initiating this procedure. The DH-PR notes that it is not only a question of the *quantity* of judgments, but also of the *quality* of the case-law. Thus, one Grand Chamber judgment might be sufficient to create a well-established case-law.

Certain experts wonder what means the parties dispose of to contest the application of this procedure.

The DH-PR notes the questions relating to the fairness of procedures, both as regards the governments and applicants. In the case of legal aid it would be necessary to modify Rule 91 of the Rules of Court to permit the granting of such aid as part of the new procedure.

The DH-PR emphasises the importance it attaches to maintaining, and even safeguarding, the key role of the judge rapporteur.

Finally the DH-PR notes that the inadmissibility procedure would henceforth be applied on the basis of the new admissibility criteria proposed for Article 35 (proposal B.4.)

Subject to these remarks of a technical nature, the DH-PR agrees with proposal B.1.

Proposal B.~~3~~. B.2.: Amend Article 29, ECHR, in order to make a joint decision on admissibility and merits the rule rather than the exception

New wording of Article 29:

"Article 29
(Decisions by Chambers on admissibility and merits)

1. If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.

2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

3. [deleted.] »

Argument:
Making a joint decision on admissibility and merits the rule will allow the Registry and the judges of the Court to save time; to a large extent, this codifies the current practice of the Court.

The DH-PR considers it necessary to align the wording of the proposal itself with the illustrative texts proposed for Article 29, paragraph 1 revised. This could be done, for example:

- By modifying the title of the proposal as follows: "Amend Article 29 of the ECHR to offer the Court greater flexibility to rule simultaneously on the admissibility and the merits".

- By modifying the second sentence of the proposed wording of Article 29, paragraph 1 as follows: 1. If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. Exceptionally, the decision on admissibility may be taken separately.

Subject to these remarks of a technical nature, the DH-PR agrees with proposal B.2.

Proposal B. ~~2~~. 3. : Amend the ECHR in order to adapt provisions concerning friendly settlements

Proposal for a new Article on friendly settlements :

“Article X
(Friendly settlement)

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.

2. Proceedings conducted under paragraph 1 shall be confidential.

3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

[4. See proposal C. 3 hereafter]”

Argument:

As a result of the proposed summary committee procedure (see proposal B.1 above) and of the proposed change to Article 29 (see proposal B.2. above), there will be far fewer separate admissibility decisions, decisions which at present trigger the Court's obligation to put itself at the parties disposal with a view to securing a friendly settlement. It thus becomes necessary to adapt the friendly settlement procedure and make it more flexible. The Court would thus have the power, but not the obligation, to place itself at the parties' disposal, at any time in the proceedings, with a view to securing such a settlement. *Implementation of this proposal* ***would*** ~~*ensure that the proposed summary committee procedure is taken*~~ ***take*** *into account* ~~*(see proposal B.1 above)*~~ *and codify the current practice whereby the Court may encourage friendly settlements even before the case is declared admissible. This proposal combines current Article 38, § 1 (b) and § 2, and Article 39, which would therefore be deleted*[6].

With the above drafting suggestions, the DH-PR agrees with proposal B.3.

Proposal B. 4 : Amend the ECHR in order to ~~extend the admissibilty requirements (indamissibility~~ add a new admissibility requirement, thus allowing the Court to reject cases that cumulatively satisfy the following three criteria: i.~~if~~ the applicant has not suffered a significant disadvantage, ii.~~and if~~ the case does not raise a serious question affecting the interpretation or application of the Convention or the protocols thereto ~~or,~~ and iii. the case does not raise any other issue of general importance.

New wording of Article 35:

"Article 35
Admissibility criteria

1 … .

2 … .

3 The Court shall declare inadmissible any individual application submitted under Article 34

a if it considers the application incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application; or

b if the applicant has not suffered a significant disadvantage and if the case does not raise either a serious question affecting the interpretation or application of the Convention or the protocols thereto or any other issue of general importance.[7]

[6] One expert considers that this solution is unsatisfactory on the ground that it would call into question the current practice of the Court (formal decision in respect of such settlements only after admissibility).

[7] Another possible wording could be the following: (inadmissibility if) "the applicant has not suffered a significant disadvantage, except if the Court considers that a further examination of the case is necessary for other reasons".

4 … . ”

Argument:
This proposal would:

a. allow the Court to examine admissibility first under this new requirement before looking, where appropriate, at the remaining admissibility requirements, which would save time;

b. make it possible to reject applications which do not have any interest from the general point of view of the protection of human rights and entail no significant restriction of the individual's right to court relief ~~since rejection of the application concerned does not have any significant disadvantageous effects on the applicant.~~ This especially means that "clone cases" could only be dismissed as ill-founded, if there was no significant disadvantage which would affect the applicant;

c. therefore make it possible for the Court to concentrate on the more important cases brought before it.

Whether to accept this proposal or not does, however, imply an important political decision since it cannot be denied that it will in effect entail some restriction of the individual's access to the Court.[8] *[to be completed, notably with an indication of the level of support for this proposal in the CDDH and the key factors that could play a role in such a political decision]*

[P.M. : some indication to be given here of the types of cases which could be covered by this new requirement]

Impact assessment: [to be completed in the light of information to be provided by the Registry]

The DH-PR notes that, although in another context, the criteria (ii) and (iii) are similar to those used in Article 43 of the Convention and that they, accordingly, cover both cases raising new questions of interpretation of the Convention and cases requiring substantial changes of national law or administrative practice (see the explanatory report to Protocol N° 11, §§ 100-102).

The DH-PR notes that the Court, in its case-law, has always accepted persons as victims on the mere basis of the risk that they suffer significant disadvantage. It notes that it will be necessary to change the wording of the new proposed Article 35 to reflect this situation, but does not deem it necessary to engage in this drafting exercise at this juncture.

[8] Three experts expressed serious reservations about proposal B.4 on the extension of admissibility requirements and questioned the real need for it (see the arguments set out in the meeting report, document CDDH-GDR(2003)012, § 8).

Before formulating a definitive opinion, the DH-PR finds it important to obtain further information, notably as regards the expected effects of this proposal in different respects.[9]

With these remarks and the drafting suggestions above, the majority of the DH-PR agrees with proposal B.4.

Proposal B. 5 : Amend the ECHR to allow for the adoption of a Statute of the Court which would regulate certain procedural/organisational matters currently regulated in the Convention itself and, possibly, certain important matters currently regulated in the Rules of the Court

Proposal for a new provision on the adoption of a Statute of the Court:

[Possibly: to be completed by DH-PR]

Argument:
A statute would be much easier to amend than the Convention itself; it would thus significantly increase the adaptability of the Convention system to any future developments and needs. Amongst other matters, the Statute could address issues such as: [examples to be given here; to be completed following the meeting of DH-PR on 5-7 March 2003; one of the suggestions concerns the number of judges sitting in a Chamber]

Diverging opinions are expressed within the DH-PR as regards the appropriateness and necessity of a Statute, as proposed in proposal B.5.

The DH-PR has proceeded in two stages, in order to respond to the invitation of the CDDH-GDR to give more thought to the proposal. It held a discussion in the full meeting and then set up an open-ended and informal working group to clarify the matter further.

Two points of view emerged in the full committee.

The first was that adopting a Statute would be useful, and even necessary, to enable the system to operate more flexibly and therefore adapt to any future needs. In such a case the new article on the adoption of a Court Statute should contain three main elements:

(a). Method for the adoption of the Statute - On this point it was suggested that the Statute should be adopted by a two-thirds majority of the Committee of Ministers, after consulting, or even on a proposal of, the Court.

[9] **Comparing the proposed text with that of Article 43 of the ECHR, the DH-PR wonders whether the omission by the CDDH-GDR of the adjective "serious" ("grave") to qualify the "issue of general importance" was intentional.**

(b) The procedure for modifying the Statute - Since the purpose of adopting the Statute is to achieve flexibility and adapt the system to future needs it should be possible to modify the Statute by a two-thirds majority of the Committee of Ministers, after consulting, or even on a proposal of, the Court.

One should however foresee an exception to the rule of the two-thirds majority, concerning modifications of the number of judges of the Court, in accordance with proposal B.6 of the CDDH-GDR. In this particular case, given its importance and its financial implications, the Committee of Ministers would decide unanimously.

(c) The provisions of the Convention that would remain as such or would be specified in the Statute - However, from the standpoint of convention techniques it is not necessary, or even correct, to specify in the Convention the provisions of the Rules of the Court that would be "promoted" to the Statute.

The experts who favored the second approach, while not opposing in principle the elaboration of a Statute of the Court, questioned the wisdom and necessity of introducing a third level of regulations, governing the Court, in addition to the Convention and the Rules of Court. They pointed out the confusion this might cause as to the status of certain provisions and the risk of repetition of provisions in the various instruments.

They were not yet convinced that there was sufficient material to justify the elaboration of a Statute. They acknowledged the need for a more flexible regulation of the number of judges in the Court and in the Chambers, but they proposed that this be regulated through a new provision in the Convention, requiring a decision by the Committee of Ministers to modify those numbers.

It was also noted that "raising" certain provisions of the Rules to the Statute would do nothing to achieve the desired flexibility, given that the Rules may, at all events, be amended by the Court. According to this second approach, in order to settle the problem it would suffice to adopt the following provision:

"Article Y

Amendments by decision of the Committee of Ministers"

1. Articles (*, *, and *) under this Section of the Convention, may be amended by decision of the Committee of Ministers.

2. Decisions of the Committee of Ministers under Article 20 to [modify] [increase] the number of judges shall require unanimity in the Committee ».
[to be placed at the end of Section II of the Convention.]

The informal working group carried out a rapid review of the provisions of Section II of the ECHR (articles 19 to 51) to identify the ones that might be included as such in the Statute or be specified by it. Once more, the criterion used was that set by the CDDH-GDR, namely the search for flexibility and the system's adaptability. However,it was aptly pointed out that there was a second underlying criterion, namely the importance of any particular provision, since the Convention could not be deprived of articles or paragraphs - like Article 19, for example - that underpinned the Court's functioning, or basic principles that could not be abandoned, such as judges' impartiality.

Continuing on these lines, three provisions were identified that, *prima facie,* could be included or specified in such a Statute, namely:

-Article 20 (number of judges),
-Article 26 (plenary Court) and,
-Article 27 (Committees, Chambers and Grand Chamber).

In the light of these admittedly preliminary conclusions, it may be asked whether there is really any need for a Statute or whether it would be more appropriate to follow the second approach and adopt a provision on the lines of the one set out above (Article Y). In view of time constraints, the DH-PR chose not to reach a decision at this stage of its discussions but to transmit the fruits of its discussions so far to the CDDH-GDR and DH-PR joint meeting (17-20 March 2003).

Proposal B. 6: Amend the ECHR to make it possible to increase the number of the judges of the Court.

New wording of Articles 20, 22 and 27 of the Convention:

“Article 20
Number of judges

The Court shall consist of a number of judges at least equal to that of the High Contracting Parties. The number of judges may be modified [increased] under the conditions set out in the Statute of the Court."[10]

The DH-PR suggests the following wording:

« Article 20
Number of Judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties. However, the number of judges may be modified [by a decision of the Committee of Ministers][in the manner prescribed by the Statute of the Court], as long as the number always remains at least equal to that of the High Contracting Parties.

"Article 22
Election of judges

[1. No change]

2. The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties, in the event of an increase in the number of judges in accordance with Article 20 and in filling casual vacancies."

"Article 27
Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. No two judges sitting in a committee, a Chamber or a Grand Chamber may be judges elected in respect of the same High Contracting Party.

[2. No change]

[3. No change]"

Argument:
The increase in the number of judges could allow the Court to deal with a greater number of cases[11]. These extra judges should be elected in respect of States with the heaviest caseload (quantitatively and/or qualitatively). They would have a status and a role identical to those of the other judges.

10 An alternative method would be to specify these conditions (including the question of a unanimous decision of the Committee of Ministers) as well as the procedure to be followed in the Convention itself.

11 Some experts expressed doubts as to whether the increase in the number of judges would be an appropriate answer to the present workload of the Court.

The increase in the number of judges, if agreed, will require an amendment to the European Convention on Human Rights which presently specifies that "the Court shall consist of a number of judges equal to that of the High Contracting Parties" (Article 20). So that each time that an increase in the number of judges is necessary the Convention would not need to be amended, and to add more flexibility in the future, the amendment should provide that the Statute of the Court and not the Convention itself should fix the number of judges. This number should however not be below one judge per Member State.

The modalities for choosing the countries which could benefit from extra judges remain to be defined. It could be, for instance, a reserve list of judges elected at the same time as the other judges out of which the Committee of Ministers would choose these extra judges. Another solution would be to hold a new election when the need for extra judges would be felt.

Moreover, it would be indispensable to specify in the text of the Convention that it is not possible that two judges elected in respect of the same High Contracting Party sit in the same formation. Important questions concerning the terms of office of extra judges and the conditions under which they could be called upon to exercise their functions remain to be examined.

With the drafting suggestions above, the majority of the DH-PR agrees with proposal B.6. Most experts insist on a unanimous decision by the Committee of Ministers.

Several experts nevertheless express hesitations as regards proposal B.6.. One expert indicates that his governement is clearly against this proposal: (i) it is not necessary in order to solve the problems of the Court and it would be better to reinforce the registry; (ii) several national judges create a risk of diverging appreciations of the national situation; and (iii), the proposal increases the risk that cases will be treated by the judges of the overrepresented countries.

Proposal B. 7 : The Registry of the Court needs to be strengthened to be able to deal with the influx of new cases whilst maintaining the quality of the judgments. The following elements could be considered with a view to this reinforcement:

- Experienced national lawyers could be employed to strengthen the Registry for a determined period of time, in addition to the lawyers/international civil servants of the Court's Registry;
- Strengthen the legal and scientific support afforded to judges

Argument:
Despite the elements for reform which are presented elsewhere, and in view of the statistics presented by the Court, it is acknowledged that the number of cases is going to continue to increase in the coming years.

Diversifying ways of recruiting lawyers to the Registry of the Court needs to be examined. One idea would be the recruitment of experienced national lawyers for a determined period of

time (some years). This would allow for an increase in the work capacity of the Registry whilst giving it the benefit of these lawyers' national experience. In addition, once this period of time has been completed, these national lawyers would return to functions in their countries having acquired a good knowledge of the Convention system, which should allow for better prevention of violations at the national level. The recruitment of such national lawyers would however need guarantees as to their independence, in particular if they are national civil servants on secondment, notably as regards their manner of appointment. It should be for the Court to choose these lawyers ***taking into account also the balance to be kept between temporary and permanent personnel.***

It is essential that judges benefit, for all their judicial work, from legal and scientific support so as to maintain the quality of the Court's judgments and the coherence of its case-law. Such support could take the form of a strengthening of the registry's research unit or of providing a legal secretary to each judge. However, a detailed study of the needs concerning legal and scientific support for the judges would be necessary. More generally, the needs of the Court and its Registry should be kept under review, ***whilst respecting general budgetary restraints.***

The DH-PR notes that means must be found to ensure that the "experienced" lawyers will not only be judges or seconded civil servants, but will come from all sectors involved in the administration of justice – thus also e.g. advocates and lawyers for NGOs.

With these remarks and the drafting suggestion above, the DH-PR agrees with proposal B.7.

C. IMPROVING AND ACCELERATING EXECUTION OF JUDGMENTS OF THE COURT

Proposal C. 1: Whilst maintaining the principle of subsidiarity, the Court could identify in its judgments what it considers to be an underlying systemic problem and the source of this problem, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments.

Argument*:*
This proposal follows the Court's own submission to the Ministerial session on 7 November 2002 (cf. CDDH-GDR (2002) 010 §§ 8 and 9).

Firstly, it should be ensured that judgments of the Court identify as clearly as possible (legislative texts, administrative practices, etc.) underlying systemic problems, so as to assist as much as possible ***the respondent State to identify the execution measures required and*** *the Committee of Ministers in its supervision work.*

Furthermore, it should not be necessary to await ~~*Finding whether there is a systemic problem should not be left until*~~ *the phase of supervision of the execution of judgments* ***to establish a systemic problem****. The judgment itself should, if possible, contain information on such a problem, in particular where it could lead to*

numerous applications. It would help the Committee of Ministers to identify rapidly, together with the State concerned, the best ways to resolve such problems.

All judgments containing indications on the existence of a systemic problem and on the source of this problem should be specially notified as such not only to the State concerned, but also to the Committee of Ministers, to the Parliamentary Assembly, to the Secretary General and to the Commissioner for human rights.

~~*The aim of the present proposal is not to deny the responsibility of the Committee of Ministers to identify, together with the State concerned, the cases which reveal systemic problems. Its aim is to improve the efficiency of the exercise of this responsibility, through information to be found in the judgment itself.*~~ *It is clear that a State which would not, or no longer, recognise the existence of a systemic problem could give to the Committee of Ministers the reasons for not recognising it.*

[By contrast, it does not seem advisable that judgments of the Court indicate corrective measures to solve the identified problems. On the basis of the subsidiarity principle inherent in the Convention system the principle has been long established that it is for the Court to declare a violation but it should be for the Member State, subject to the supervision of the Committee of Ministers, to choose measures to correct that violation (see, among other authorities, Scozzari and Giunta v Italy judgment of 13 July 2000 para 249).

There are good reasons for this principle not to be changed. An international court such as the European Court of Human Rights, no matter its expertise, cannot be as familiar with a State's constitutional and legal system as the competent authorities of this State, nor able to choose the best method of amending this system, which involves the legislative and executive powers, and possibly the judiciary power, of the State concerned. Furthermore, except when it is expressly required by the Convention, an international court should not intervene in the balance of national powers to favour one of them, the legislative power for instance, more than an other.

This would not prevent the Court from indicating (in its annual activity report for instance) measures which it deems could alleviate a systemic problem. However, it would be appropriate that such a reflection takes fully into account, notably through a consultation of the Department for the Execution of Judgments, the experience and the requirements of the Committee of Ministers in this field.

The question is very different in infringement proceedings (see proposal C. 4 below).][12]

With the drafting proposals above, the DH-PR agrees with proposal C. 1.

Proposal C.2: To develop the Committee of Ministers procedures and practices under Article 46 § 2 of the Convention to give priority to the rapid execution of judgments revealing systemic problems (without detriment to the priority attention accorded to important other judgments) and to strengthen the Department for the execution of judgments.

12 Paragraphs to be moved to the detailed technical document.

***Argument**:*
The aim of this proposal is to ensure that the procedure before the Committee of Ministers under Article 46, §2, is so organised (possibly through amendment of the relevant Rules of the Committee of Ministers) that it contributes as much as possible to the rapid solution of systemic problems, and where necessary, also to the problem of violations already committed and capable of being brought before the Court or already before the Court. ***Considering the reinforcement of the Court and of the registry, it is important to reinforce, again within general budgetary restraints, also the Department for the execution of the judgments. When recruiting new personnel it is important to ensure a balanced representation of the member States, taking into account both geographical criteria and the volume and importance of the case-load, as well as the balance between temporary and permanent staff.***

Elements of these proposed changes could be:

- to underline the special duty of the respondent state, after a "pilot" judgment has been rendered, to inform the Committee of Ministers rapidly and comprehensively of the remedial action envisaged and of the Committee of Ministers to follow very closely the adoption of these measures and in particular the respect of the time table set. Where necessary this control could be more frequent than the ordinary 2 months interval presently foreseen between the Committee of Ministers's HR meetings. Delays in execution could even also become a political issue and be treated as such.

- to ensure maximum publicity, e.g. through interim resolutions combined with press releases for wide distribution, during the execution process in such cases.

- to associate more closely the Parliamentary Assembly to the exercise. For example, the Committee of Ministers could, if the reforms are not implemented as envisaged or if no proposals are made, formally write to the Assembly and inform it of the situation so that the Assembly may itself set in motion the procedures it has foreseen, notably those in Resolution 1226(2000) (e.g. inviting the responsible minister to come and explain the situation before the Assembly).

If the State concerned still does not comply with the obligation to remedy the systemic problem, the Committee of Ministers could take ~~steps to institute~~ ***various measures to increase the pressure on the respondent State, including the institution of*** *infringement procedures before the Court (cf. proposal C. 4).*

The DH-PR notes that the Committee of Ministers is presently examining different questions concerning its working methods and the responses to be adopted in the event of slowness or negligence or non-execution of judgments of the Court. The final draft of this proposal should take into account the results of these examination (see also proposal C.4.).

With this remark and the drafting suggestions above, the DH-PR agrees with proposal C.2.

Proposal C. 3: Amend the ECHR to enable the Committee of Ministers to supervise the execution of *decisions* taken by the Court in respect of friendly settlements

Elements :
A fourth paragraph could be inserted in Article X (Friendly settlements) as proposed under B. ~~2~~ **3** above :

"4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement, as they appear in this decision."

Argument :
In order to enable the Committee of Ministers to supervise the execution of the terms of a friendly settlement, the Court has developed a practice whereby it issues a judgment *and not a* decision *to endorse friendly settlements, as envisaged by Article 39 of the Convention. The negative connotation for defending States of a* judgment, *in contrast to a* decision, *regarding friendly settlements is recognised and it is likely that States would be more inclined to conclude friendly settlements if these were the subject of a mere decision of the Court. The Court's practice finds its roots in the fact that only the execution of* judgments *is supervised by the Committee of Ministers (Article 46). Consequently, it is proposed to vest the Committee of Ministers with a new power to supervise the execution of* decisions *endorsing the terms of friendly settlements. This proposal does not aim to reduce the present supervision responsibilities of the Committee of Ministers, notably as regards other striking-out decisions envisaged by Article 37 (see Rule 44 of the Rules of Court) [question to be examined further by DH-PR].*

Whilst agreeing in principle with proposal C.3, the DH-PR asks the Secretariat to submit a draft proposal taking also into account the consequences of the proposed changes to Articles 28 and 29 for other decisions containing undertakings by the parties than those based on friendly settlements (cf Rule 44, § 3, of the Rules of Court). This draft could then be discussed at the joint meeting of the CDDH-GDR / DH-PR (17-20 March 2003).

Proposal C. 4: The ECHR should be amended to enable the Committee of Ministers to institute proceedings before the Court which could lead to a finding by the Grand Chamber of a continuous infringement by a State of its obligation, under Article 46, to abide by judgments against it. Such a finding should be accompanied by a financial sanction.

Proposal for a new Article :

"Article 46 bis

1. Where the Committee of Ministers decides that a High Contracting Party has failed within a reasonable time to comply with a judgment in a case to which it is party, it may bring that Party before the Court for **a continuous** violation of its obligation under Article 46.

2. If the Court finds a violation it may impose a financial penalty, to be paid by the Party concerned to the Council of Europe."

New wording of Article 31 :

"Article 31

The Grand Chamber shall

a. ...
b. ...
c. determine applications brought before it by the Committee of Ministers under Article 46 bis."

***Argument**:*
It is the States Parties' collective responsibility to preserve the authority of the Court – and thus the credibility and efficiency of the Convention system – against a State that would deliberately and persistently refuse to execute a judgment concerning it. The collective supervision of the execution of judgments is ensured by the Committee of Ministers which, already today, can find that a State failed to abide by its obligations in not abiding by a judgment of the Court and order consequently measures to ensure its execution.

The Committee of Ministers needs a wider range of means of pressure to ensure the execution of judgments. A new way of exerting pressure should be set up ; it would come in addition to ***existing possibilities*** ~~*the pressure already exerted by the Committee of Ministers in certain interim resolutions adopted pursuant to the Convention*~~ *and* ~~*that*~~ ***it*** *would be used before having recourse to Article 8 of the Council of Europe Statute (suspension of right to vote at the Committee of Ministers, or even withdrawal from the Organisation) ; the latter measure is an extreme one and its application would be counterproductive in most instances.*

The Committee of Ministers should ***thus*** *have a new power to start,* ***where this is deemed appropriate by the Committee*** ~~*in appropriate cases, according to conditions to be specified,*~~ *a procedure* ~~*whose aim would be that*~~ ***before*** *the Court* ***in order to obtain*** ~~*issue*~~ *a second judgment against the State concerned,* ***imposing, if the Court finds a*** *continuous infringement of* ~~*the State's obligation, under*~~ *Article 46*~~*, to abide by any judgment against it and impose consequently*~~ *a financial penalty. It is to be noted that the purpose of this procedure is by no means to allow the re-opening of the question of the violation already answered by the first judgment of the Court.*

The aim of such a penalty, the amount of which would be payable to the Council of Europe, would be to emphasise the seriousness of the fact that the State failed to abide by its obligations under the Convention and vis-à-vis the other contracting States, jointly guarantors of the execution of judgments.

The Court should give priority to the delivery of such judgments concerning infringement.

The mere existence of a such procedure which could lead to such a penalty and the threat to have recourse to it should in itself be an important and efficient new incentive. ~~The effective recourse to such a procedure should remain exceptional. It would remain a last resort measure for the Committee of Ministers before recourse to Article 8 of the Council of Europe Statute.~~

Given the rare occasions where such a measure would be used, this new power would not result in an increase of workload for the Court. It should even contribute to alleviating it (if for instance this new power led to the execution of a pilot judgment, execution which would put an end to the influx of repetitive cases).

However, the prime aim sought by the introduction of this new power is not to alleviate the Court's workload, but to contribute to the efficiency of system as a whole, by giving the Committee of Ministers a new effective way of ensuring the execution of judgments.[13]

[Reference to Article 228 TEU in the technical Appendix]

Most experts express support for this proposal. Some wish, however, to examine it more in depth because of its important implications of principle. Others have reservations.

Some find that political measures such as suspension of the right to vote or other similar sanctions would be more efficient.

It is underlined that it is for the Committee of Ministers to evaluate if, in a specific situation, it would be more efficient to have recourse to the new procedure rather than to political pressure.

Experts find it likely that the mere threat of having recourse to the new procedure will be enough to bring recalcitrant authorities to execute judgments rapidly and efficiently, whether individual or general measures are concerned.

The DH-PR also notes that the Court will in all likelihood only be seized with a request to impose this new monetary penalty after the Committee of Ministers has itself established the non-respect of Article 46, §1, and found that the pressure means used so far have been resultless. It notes that a wording has to be found for the proposed Article 46, bis, which takes into account this situation, presently reflected only in the proposal's expression "continuous infringement",

With these comments and the drafting suggestions above, the majority of the DH-PR agrees in principle with proposal C.4.

13 One expert considers that Article 46 bis as proposed would raise problems of principle and practice.

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Proposal C. 5.: Accompanying measures: making optimum use of other existing institutions, mechanisms and activities

Other existing institutions, mechanisms and activities of the Council of Europe can play a useful support role in promoting rapid execution of judgments.[14] Some of them already do so. It is important that optimum use is made of these potential synergies with the execution process, whilst respecting the competences – and, where applicable, the independence - of the various actors concerned. Some key examples are given below.

[Text for C.5.1 as proposed by the Office of the Commissioner:]

Example C.5.1: The Commissioner's good offices could be called upon more systematically to assist states wishing to tackle certain difficult problems of implementation of human rights

Argument:
When the office of Commissioner for Human Rights was established, the terms of reference expressly prevented the Commissioner from dealing with individual human rights cases. This applies after judgment has been delivered, as much as before. It was nonetheless envisaged that the Commissioner might play a role in helping states to identify and remedy structural human rights problems, which extends to situations involving repetitive cases before the Court. The Commissioner and his team work with the member states in a flexible manner, combining non-judicial authority in human rights matters with discretion, which can prove very useful. There have in fact already been instances where the Commissioner has helped out in this way with regard to situations which were about to give rise to applications before the Court, or which entailed a risk thereof. The Commissioner naturally has little chance of success where a state refuses to apply a standard or to implement a Court decision. However, he can be very helpful where states are well-intentioned but encounter difficulties in understanding the implications of human rights standards resulting from the Convention or its interpretation by the Court, or in implementing those standards. It also appears inappropriate for the Commissioner to take action where the difficulty is primarily of a financial nature or where extremely wide-ranging measures are needed for a state to bring itself into line with the Council of Europe's requirements. The Commissioner may become involved at the request of the state concerned or of his own initiative, in agreement with that state. Whether the Commissioner should work with national non-governmental bodies, such as NGOs and human rights institutions, in seeking to overcome a given difficulty is a matter for the Commissioner's discretion. Since the Commissioner may become involved, he should automatically be sent a copy of all judgments in which the Court identifies an underlying structural problem (see proposal B above).

The Commissioner's terms of reference include provisions which enable him to act in the above manner. However, so as to make clear its support for the Commissioner's taking such action, and its wish to see the Commissioner's office endowed with the resources needed to step up this part of its activities, the Committee of Ministers might, in its considerations on

14 Their role is obviously not limited to this. They also – perhaps even primarily – play a role in the prevention of violations at national level, thereby contributing to the objectives of section A of the present document. To that extent the measures listed here can also be considered, mutatis mutandis, as useful accompanying measures to Section A.

reinforcing human rights protection mechanisms, express the desire that the Commissioner should be able to develop his role in such matters.

Example C.5.2: Article 52 of the Convention could in appropriate cases be used by the Secretary General of the Council of Europe in relation to a structural problem in a State Party which is revealed in a judgment of the Court.

***Argument**:*
Article 52 gives the Secretary General the power to seek explanations from any State Party of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention. While this procedure is not frequently used, there is no reason of principle why the Secretary General could not have recourse to it in relation to a systemic problem in a State Party, as revealed in a judgment of the Court. It would be important that this power be exercised in such a manner that it can produce useful synergies with other institutions: primarily the Committee of Ministers' role of supervising execution of judgments, but also possible actions by the Commissioner for Human Rights. In this context, it is equally important that an appropriate follow-up is given to Article 52 exercises, for example in the form of targeted co-operation and assistance activities of the Council of Europe with the country concerned. This can help prevent violations and thus limit the number of (repetitive or other) applications being brought before the Court.

Example C.5.3: Recourse to assistance and expertise of the Council of Europe, including to that of the Venice Commission, could be intensified

Argument:
Similarly to recourse to the Commissioner for Human Rights, and in appropriate cases, recourse could be had to the expertise the Council of Europe, including to that of the Venice Commission, especially where a judgment would require general measures affecting constitutional or other important legal rules of the respondent State.

Example C.5.4.: Role of the Parliamentary Assembly

Reference is made to the increasing attention with which the Parliamentary Assembly follows the execution of judgments and the proposal to associate the Assembly more closely to that exercise (see proposal C.2. above).

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[NB: the precise place of the following proposal in the present document is still under discussion. It has been suggested that it could be integrated in proposal A.2 (b.) above since the objectives of both are the same: promoting a wider impact of judgments in States other than the Respondent. Another option would be to insert it in Section B, since it concerns the Strasbourg proceedings. Matter to be examined at the joint CDDH-GDR/DH-PR meeting (17-20 March 2003).]

The DH-PR marks its general approval of proposal C.5.

Proposal C. 6: The Court could make more frequent use of the possibility to invite other states to intervene in cases of principle. It is not necessary to amend the Convention to establish this practice, but it should be reflected in the Rules of Court.

***Argument**:*
[It is important that all contracting states follow the case law of the Court, and that they review their legislation and administrative practice in the light of the Courts case-law, including judgments against other states. It is, however, difficult to give states a legal obligation to abide by judgments against other states. Firstly the judgment will be directed at one contracting state, and it will be more difficult to assess the implications of the judgment in another legal system. Secondly states, which have not been party to the proceedings, will not have had the opportunity to present their case in the Court, and may have arguments that might have lead to another result.][15]

It would be useful if there were more frequent interventions from other States in cases of principle. This would increase the knowledge of pending cases among the contracting states, and contribute to all aspects and arguments being presented to the Court. Even though the judgment still would have binding effect only on the state that is a party, the judgment would probably be easier to apply also for other intervening states that have presented their arguments based on their legal system to the Court. The Court could invite contracting States to intervene in cases that raise questions of principle for a wide number of states. Cases that are referred to the Grand Chamber will usually be cases that should be brought to all contracting States' attention with an invitation to intervene.

The DH-PR marks its general approval of proposal C.6.

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15 Text to be moved to the detailed technical document.

Appendix V

ELEMENTS IN VIEW OF THE PREPARATION OF A RECOMMENDATION of the Committee of Ministers to member States on the European Convention on Human Rights in professional training and university education

[1.] The Committee of Ministers, in accordance with Article 15 of the Statute of the Council of Europe,

[2.] Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

[3.] [Considering the importance of the Convention for the Protection of Human Rights (hereafter "the Convention"), as interpreted by the European Court of Human Rights (hereafter "the Court"), as a constitutional instrument for safeguarding public order in Europe;]

[4] Stressing the role played by education to the principles inspiring the Convention in the prevention of violation;

[5.] Recalling that a wide publication and dissemination in the member States of the text of the Convention and of the case-law of the Court are important in order to ensure the effective implementation of the Convention at the national level[16], but that these measures must be supplemented by others in order to achieve their aim;

[6.] Stressing the importance of adequate university education and professional training programmes in order to ensure that the Convention, as interpreted by the Court, is efficiently applied, notably in the framework of the administration of justice;

[7.] Stressing the importance of specific professional training in human rights for all categories of persons involved in law enforcement, including judges and prosecutors, lawyers, members of the security forces (police and gendarmerie), prison personnel and others dealing with persons deprived of their liberty, including in hospitals, immigration services, local authorities and social services;

[8.] Stressing also the importance of ensuring public awareness of the Convention and thus of providing a firm basis for a strong civil society;

[9.] Recalling the resolutions and recommendations it has already taken on different aspects of the issue of human rights education[17], as well as initiatives undertaken

16 The Committee of Ministers devoted to this issue its Resolution (2002)58 on the publication and dissemination of the case-law of the European Court of Human Rights, as well as its Recommendation (2002)13 to member States on the publication and dissemination in the member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights.

17 In particular: Resolution Res(78)41 on the teaching of human rights and Resolution Res(78)40 instituting Council of Europe fellowships for studies and research in the field of human rights; Recommendation Rec(79)16 on the promotion of human rights research in the member States of the Council of Europe; Recommendation Rec(85)7 on teaching and learning about human rights in schools as well as its Appendix containing suggestions for teaching and learning about human rights in schools.

notably by NGOs and national human rights institutions to promote a greater understanding and awareness of the Convention and the case-law of the Court;[18]

[10.] Taking into account the diversity of traditions and practice in the member States as regards professional training, university education and awareness raising regarding the Convention system,

I. Recommends the Member States to:

(a) ensure that appropriate knowledge of standards in the field of human rights, in particular the Convention and the case-law of the Court, is, according to the manner which is appropriate to the specific needs of each professional sector, included**:**

- as a [mandatory] component of the core curriculum of law degrees, of national or local bar examinations and of the initial and continuous training provided to judges, prosecutors and lawyers;

- in the initial and continuous professional training offered to other sectors engaged in law enforcement such as members of the security and police forces, the personnel of penitentiary institutions and those dealing with other persons deprived of their liberty, including in hospitals, immigration services, local authorities and social services.

(b) ensure the effectiveness of such measures by:

- providing training of high quality using both state and non-governmental institutions with the appropriate expertise;

- ensuring that training is delivered by trainers who have proven familiarity with the Convention concepts and the case-law of the Court as well an adequate knowledge of professional training techniques;

- supporting initiatives aiming at the training of human rights teachers and trainers.

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18 Possible content of a future collection of good practices:

- With regard to professional training, provide examples notably concerning training programmes for judges and prosecutors, initiatives by bar associations, programmes for prison staff, etc.
- With regard to university education, provide examples concerning specialised programmes (such as certain national master degrees or the "*European Master in Human Rights and Democratisation*" (E.MA)), as well as more punctual university programmes (such as the summer courses of the *European University Institute* (EUI) or those of the "*Institut international des Droits de l'Homme René Cassin*" (Strasbourg));
- With regard to higher education initiatives involving at the same time students, university professors and law professionals (judges, prosecutors, lawyers), which are particularly relevant to achieve the aims of the recommendation, refer, for example to moot court competitions such as the *Sporrong and Lönnroth Competition,* organised with the co-operation notably of the Nordic judges of the European Court of Human Rights and judges of the Supreme Courts in the 5 Nordic countries, and the pan-European French-speaking *René Cassin* Competition, organised by the association Juris-Ludi notably with the co-operation of the Council of Europe.

The list should be completed in the light of the contributions which are to be sent to the Secretariat by NGOs and national institutions for the promotion of human rights, as requested during the consultation meeting on the reform of the Court (17-18 February 2003) and during the 53rd meeting of the DH-PR (5-7 March 2003).

(c) encourage non state initiatives for the promotion of knowledge and/or awareness of the Convention system, such as special institutions for teaching and research in human rights law, moot court competitions, awareness raising campaigns.

II. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those States party to the European Cultural Convention which are not members of the Council of Europe.